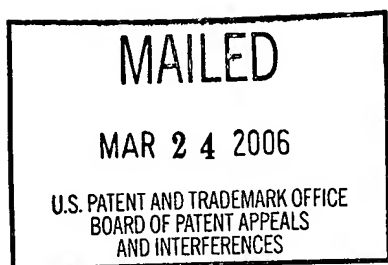


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



Ex parte DARIN EVANS

Appeal No. 2005-2211
Application No. 10/715,002

ON BRIEF

Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-26 and 28-31. Claims 16, 26 and 27-31 were amended subsequent to the final rejection in an amendment filed April 22, 2004. The appellant originally appealed from the examiner's rejections of claims 1-31. On page 4 of the answer, however, the examiner withdrew the rejection of claim 27 under 35 U.S.C. § 112, second paragraph. Inasmuch as there is no other standing rejection of claim 27, this appeal involves only claims 1-26 and 28-31.

BACKGROUND

The appellant's invention relates to a bumper for reducing pedestrian injury. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The Prior Art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Sturuss et al. (Sturuss)	5,092,512	Mar. 3, 1992
Glance	5,799,991	Sep. 1, 1998
Scrivo (published UK Patent Application)	GB 2,081,653	Feb. 24, 1982
Hamaya (Japanese patent document)	S57-172848	Oct. 23, 1982 ¹

The Rejections

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the rejections on appeal, we make reference to the final rejection (mailed September 29, 2004) and answer (mailed April 26, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed April

¹ We derive our understanding of this reference from the English language translation obtained by the examiner.

11, 2005) and reply brief (filed June 27, 2005) for the appellant's arguments thereagainst.

The following rejections are before us for review.

Claims 7-21 and 28-31 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

Claims 1, 5-8 and 15-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Scrivo.

Claims 9 and 11-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Scrivo in view of Sturrus.

Claim 4 stands rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over Scrivo.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Scrivo.

Claims 2 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Scrivo or Scrivo in view of Sturrus and further in view of Hamaya.

Claims 22-26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Scrivo or Scrivo in view of Sturrus further in view of Glance.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The indefiniteness rejections

The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. See In re Warmerdam, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). In determining whether this standard is met, the definiteness of the language employed in the claim must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977).

We turn our attention first to the examiner's indefiniteness rejection of claim 21, and claim 31 depending therefrom, on the basis that there is no clear frame of reference for the limitation "longer than said front wall." While the examiner is correct that the language in claim 21 is sufficiently broad to encompass the upper and lower walls being longer than the front wall in either a longitudinal or lateral dimension, this is a matter of breadth, not indefiniteness. Just because a claim is broad does not mean

that it is indefinite. See In re Johnson, 558 F.2d 1008, 1016 n.17, 194 USPQ 187, 194 n.17 (CCPA 1977); In re Miller, 441 F.2d 689, 693, 169 USPQ 597, 600 (CCPA 1971); In re Gardner, 427 F.2d 786, 788, 166 USPQ 138, 140 (CCPA 1970) and Ex parte Scherberich, 201 USPQ 397, 398 (Bd. App. 1977). As the examiner has not cogently explained, and it is not apparent to us, why this language renders the claim indefinite as opposed to merely broad, we cannot sustain the rejection.

With regard to claims 7, 9, 15, 16 and 21, and claims 8, 10-14, 17-20 and 28-31 depending therefrom², the basis of the examiner's indefiniteness rejection is that no "parallelogram motion" as recited in the claims is disclosed in appellant's specification and that, in essence, the claims are misdescriptive of the invention. The examiner's criticism of the claims appears to be that appellant does not disclose top and bottom nose portions or sections which are in the form of a closed parallelogram and, as such, there can be no parallelogram motion.

The terminology "parallelogram motion" is used in appellant's specification at least on pages 3, 4, 7 and 8 and is described, on page 3, in lines 3-5, as a motion "that shifts one or both of the top and bottom front walls vertically, such that horizontal impact forces are converted at least in part to a vertical force upon receiving a horizontal frontal impact during an initial stroke of the frontal impact." In the paragraph bridging pages 4

² While claims 23-26 also depend from the claims at issue, the examiner inexplicably did not include these claims in the rejection.

and 5 of appellant's specification, it is made clear that the transformation of the top and bottom nose portions of the energy absorber from their configuration as shown in Figure 3 to their configuration as shown in Figure 4 is the "parallelogram motion" referred to in the claims. We can see from Figures 3 and 4 that, upon a frontal horizontal impact, the upper-front wall 54 and lower-front wall 57 are shifted vertically, with a commensurate bending or inclination of the top wall 52 and upper-mid wall 53 of the upper nose portion and the lower-mid wall 56 and bottom wall 55 of the lower nose portion, such that the horizontal walls (52, 53, 56, 55) of each of the nose portions, or at least portions thereof, remain essentially parallel with one another as the front walls shift vertically.

In light of the above, we conclude that the term "parallelogram motion" can fairly be understood by one of ordinary skill in the art as shorthand for the type of vertical shifting of the front wall of the nose portion and commensurate substantially parallel bending or inclination of the upper and lower horizontal walls of the nose portion seen in Figure 4. While the examiner may be correct that appellant's nose portion does not comprise a complete parallelogram, the claims do not require such. The rejection of these claims under 35 U.S.C. § 112, second paragraph, as being indefinite because of the use of the terminology "parallelogram motion" cannot be sustained.

We shall, however, sustain the examiner's rejection of claim 15, and 29 which depends therefrom³, as being indefinite because the limitation "whereby energy directed against a knee of an impacted person is converted into a throwing force that directs the person in a direction generally perpendicular to the line of impact and away from the vehicle bumper system" appears to be inconsistent with the structure and performance of appellant's disclosed bumper system for the reason articulated on page 4 of the answer. Appellant's specification states on page 3 that the "impacted person is initially 'caught' and then 'thrown' in a direction away from the line of impact" and, on page 5, that, "[u]pon a continuing impact stroke (Fig. 5), the top and bottom horizontal sections 23-24 provide a 'throwing' action, as shown by increasing forces 31 and 31'," such that "[t]he combination of these forces 31 and 31' 'throw' the impacted human 29 upward in a direction off the bumper beam 21." The appellant's specification, however, does not explain, by means of an analysis of the forces, for example, why such throwing force will direct the person, as distinguished from the person's knee, in a direction away from the vehicle bumper system rather than, as the examiner contends on page 4 of the answer, into the automobile.

The examiner's assessment of how the resultant impact forces will direct the person impacted by the bumper appears quite reasonable on its face to us and

³ Although claim 24 also depends from claim 15, the examiner inexplicably did not include it in the indefiniteness rejection.

appellant has not offered any evidence or cogent reasoning to the contrary. Accordingly, based on the record in this case, we conclude that appellant's description and explanation of the disclosed bumper system and method is not sufficient to adequately justify the result recited in the afore-mentioned "whereby ..." clause of claim 15, thereby rendering claim 15, as well as claims 24⁴ and 29 depending therefrom, indefinite.

The prior art rejections

We shall not sustain the rejection of claim 15 under 35 U.S.C. § 102(b) as being anticipated by Scrivo or the rejection of claim 24 under 35 U.S.C. § 103 as being unpatentable over Scrivo or Scrivo in view of Sturrus and further in view of Glance. For the reasons expressed above, these claims are indefinite. Therefore, the prior art rejections must fall because they are necessarily based on speculative assumption as to the meaning of the claims. See In re Steele, 305 F.2d 859, 862-63, 134 USPQ 292, 295 (CCPA 1962). It should be understood, however, that our decision in this regard is based solely on the indefiniteness of the claimed subject matter, and does not reflect on the adequacy of the prior art evidence applied in support of the rejection.

The remaining independent claims on appeal which stand rejected on prior art are claims 1, 9, 16 and 21. Claims 1 and 9 each recite an energy absorber having a

⁴ We presume the examiner's omission of claim 24 in the indefiniteness rejection to have been an inadvertent error. We leave it to the examiner to rectify this error in the event of further prosecution with respect to claim 24.

top horizontal section defined by a top wall and an upper-mid wall connected by an upper-front wall and having a bottom horizontal section defined by a bottom wall and a lower-mid wall connected by a lower-front wall. Claims 16 and 21 each recite an energy absorber including at least one section having parallel upper and lower walls and having a main front wall wherein, upon impact, the upper and lower walls flex with a parallelogram motion. Unlike appellant's claimed device, each of the top and bottom horizontal sections (legs 34) of Scrivo is comprised of a solid body rather than an upper and lower wall connected by a front wall (see brief, page 15, and reply brief, page 8). Accordingly, the above-discussed limitations of claims 1 and 9 are neither met by Scrivo nor addressed by the examiner's application of additional references to Sturuss, Hamaya and Glance. As for claims 16 and 21, even assuming the examiner is correct that each of the legs 34 of Scrivo's energy absorber will deflect in the same manner as each of appellant's top and bottom nose portions, i.e., with the front surface shifting vertically and the top and bottom surfaces bending or inclining commensurate with the shift so as to remain substantially parallel (i.e., a "parallelogram motion"), each leg 34, as pointed out above, is made of a solid body, not parallel upper and lower walls as called for in claims 16 and 21. As also discussed above, the examiner's additional application of Sturuss, Hamaya and Glance fails to remedy this deficiency.

In light of the above, we cannot sustain the examiner's rejection of claims 1, 5-8 and 16-21 as being anticipated by Scrivo, the rejection of claims 9 and 11-14 as being

unpatentable over Scrivo in view of Sturrus, the rejection of claim 4 as being anticipated by or unpatentable over Scrivo, the rejection of claim 3 as being unpatentable over Scrivo, the rejection of claims 2 and 10 as being unpatentable over Scrivo or Scrivo in view of Sturrus and further in view of Hamaya or the rejection of claims 22, 23, 25 and 26 as being unpatentable over Scrivo or Scrivo in view of Sturrus further in view of Glance.

CONCLUSION

To summarize, the rejection of claims 15 and 29 under 35 U.S.C. § 112, second paragraph, is affirmed. All other rejections are reversed. The examiner's decision is AFFIRMED-IN-PART.

AFFIRMED-IN-PART

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